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SPECIAL COMMITTEE ON THE SITUATION
WITH REGARD TO THE IMPLEMENTATION
OF THE DECLARATION ON THE GRANTING
OF INDEPENDENCE TO COLONIAL
COUNTRIES AND PEOPLES

EAST TIMOR

Working paper prepared by the Secretariat

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EAST TIMOR

I. GENERAL

1. The island of Timor is located at the tip of the chain of islands forming the Republic of Indonesia. It lies between latitudes 8'17'S and 10'22'S and longitudes 123'25'E and 127'19'E. The Territory of East Timor comprises the eastern part of the island, the enclave of Oecusse Ambeno, the island of Atauro off the northern coast and the island of Jaco off the extreme eastern tip.

2. The 1980 census recorded the total population of the Territory as 555,350, and in 1990 it was estimated at 737,000. 1/

II. CONSIDERATION BY THE UNITED NATIONS 2/

A. General Assembly and other United Nations bodies

3. Between 1961 and 1982, the General Assembly annually reviewed the situation relating to East Timor and adopted resolutions thereon, on the basis of the reports submitted to it by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples. 3/

4. In April 1977 and in each subsequent year, the Government of Portugal apprised the Secretary-General of the fact that owing to the conditions prevailing in East Timor it was not possible to transmit the information called for under Article 73 e of the Charter of the United Nations. 4/

5. At its thirty-seventh session, by its resolution 37/30 of 23 November 1982, the General Assembly requested the Secretary-General to initiate consultations with all parties directly concerned, with a view to exploring avenues for achieving a comprehensive settlement of the problem and to report thereon to the Assembly at its thirty-eighth session and requested the Special Committee to keep the situation in the Territory under active consideration and to render all assistance to the Secretary-General in order to facilitate implementation of the resolution.

6. Since 1983, the Secretary-General has kept the General Assembly apprised of the related developments in exercise of his good offices. 5/ In his latest progress report submitted to the General Assembly at its forty-fifth session, 6/ the Secretary-General stated that he had obtained the reaffirmation, from both Indonesia and Portugal, of their commitment to achieving a comprehensive and internationally accepted solution to the question of East Timor.

7. At its thirty-eighth to forty-fifth sessions, the General Assembly deferred consideration of the question to its succeeding sessions. 7/

8. On 26 September 1990, in his statement in the general debate at the forty-fifth session of the General Assembly, the Prime Minister of Portugal reiterated the position of his Government on the question of East Timor (A/45/PV.8).

9. Also during the general debate at the forty-fifth session, the Heads of State of Mozambique and Vanuatu (on behalf of the States members of the South Pacific Forum), as well as the representatives of Cape Verde and Angola, referred, inter alia, to the question of East Timor in their statements (A/45/PV.8, 13, 18, 24 and 29).

10. In the general debate of the Fourth Committee at the forty-fifth session, the representative of Mozambique made reference to the Territory and the representative of Italy, on behalf of the twelve States members of the European Community, also referred to East Timor (A/C.4/45/SR.8 and A/C.4/45/SR.10).

11. Under the mandate entrusted to it and renewed annually by the General Assembly, the Special Committee continued its review of the question at its 1983 to 1989 sessions and heard statements by Member States and petitioners concerning the situation in the Territory. 8/

12. At its 1990 session, the Special Committee considered the question of East Timor at its 1363rd and 1366th to 1368th meetings, between 1 and 9 August 1990. During those meetings, the Special Committee heard the representatives of Indonesia (A/AC.109/PV.1363 and 1366), Cape Verde (also on behalf of Angola, Guinea-Bissau, Mozambique and Sao Tome and Principe) and Portugal (A/AC.109/PV.1368); as well as 22 petitioners (A/AC.109/PV.1367 and 1368).

13. At its 1368th meeting, on 9 August 1990, the Special Committee decided, without objection, to continue consideration of the item at its 1991 session, subject to any directives that the General Assembly might give in that connection at its forty-fifth session (A/AC.109/PV.1368).

14. Since the adoption of its resolution 1983/8 of 16 February 1983 relating to East Timor, 9/ the Commission on Human Rights has not considered the question of East Timor. At the 41st meeting of the forty-first session, on 5 March 1985, the Chairman announced that the Commission had taken action in private session, under Economic and Social Council resolution 1503 (XLVIII) of 27 May 1970, with regard, inter alia, to East Timor, and that the situation relating thereto was no longer under consideration by the Commission under the terms of that resolution. 10/

15. On 1 September 1988, the Subcommission on Prevention of Discrimination and Protection of Minorities, by 10 votes to 9, with 5 abstentions, decided not to take any action on a draft resolution on East Timor. 11/

16. On 31 August 1989, the Subcommission on Prevention of Discrimination and Protection of Minorities adopted by secret ballot, by 12 votes to 9, with 3 abstentions, resolution 1989/7 entitled "Situation in East Timor", whereby it recommended to the Commission on Human Rights that it consider, at its forty-sixth session, the human rights situation and fundamental freedoms in East Timor (see E/CN.4/Sub.2/1989/58-E/CN.4/1990/2).

B. Communications related to the question

17. In a letter dated 27 July 1990 addressed to the Chairman of the Special Committee (A/AC.109/1045), the Permanent Representative of Indonesia to the United Nations reiterated the position of his Government on the question of East Timor and requested that his letter be circulated as a document of the Special Committee.

18. On 7 August 1990, the Chargé d'affaires of the Permanent Mission of Indonesia to the United Nations addressed a letter to the Chairman of the Special Committee (A/AC.109/1045/Add.1) reiterating the position of his Government on the question of East Timor and requesting that the letter be circulated as a document of the Special Committee.

19. On 26 September 1990, the Permanent Representative of Indonesia addressed a letter to the President of the General Assembly, referring to the statement delivered the same day by the Prime Minister of Portugal concerning the question of East Timor and requested that his letter be considered a document of the General Assembly (A/45/549).

20. On 20 February 1991, the Permanent Representative of Portugal to the United Nations addressed a letter to the Secretary-General on the question of East Timor and requested that his letter be circulated as a document of the General Assembly and of the Security Council (A/46/93-S/22249).

21. On 28 February 1991, the Permanent Representative of Portugal addressed a letter to the Secretary-General transmitting the text of a note verbale regarding the question of East Timor handed to the Minister for Foreign Affairs of Australia by the Ambassador of Portugal at Canberra on 11 February 1991, and requested that it be circulated as a document of the General Assembly and of the Security Council (A/46/97-S/22285).

III. POLITICAL DEVELOPMENTS

22. Under Indonesian Law 7/76 promulgated on 17 July 1976, East Timor was designated as an Indonesian province or a "first level region". The law provided for the establishment of a "Regional Government" consisting of a "Regional Secretariat" and a "Regional House of Representatives". Most of the posts in these bodies were filled by local inhabitants. East Timorese also participate in the work of the National House of Representatives, and in the People's Consultative Assembly of Indonesia. 12/

23. On 23 April 1987, general elections for the National Assembly were held in Indonesia. According to an official Indonesian report, there were 360,144 voters registered with the "East Timor Elections Committee". Of the total, 338,078 (93.7 per cent) voted for the ruling Functional Group (GOLKAR). 13/

24. On 18 September 1987, Mr. Mario Carrascalão was sworn in for a second five-year term as "Governor" of East Timor by the Indonesian Minister for Home Affairs.

25. According to a press report, as of October 1990, there were 12,000 Indonesian troops in East Timor, "but they were being turned to social works in the villages. Reportedly, six territorial battalions were engaged in construction of schools and bridges, as well as improving the farming system in the mountainous areas of the Territory". 14/ Press reports also stated that the Indonesian military presence in the Territory was estimated by independent sources at 7,000 troops, while according to the resistance forces that presence was between 10,000 and 15,000 troops. 15/

26. According to press reports Frente Revolucionária de Timor Leste Independente (FRETILIN) has some 200 to 400 fighters in the Territory, while a FRETILIN spokesman reportedly maintained that there were 5,000 armed guerrillas. 14/ Other sources indicate that as of 1991, the FRETILIN guerrilla forces were reduced to some 150 to 300 rebels. 15/

27. A recent report of the Department of State of the United States of America affirms that frequent military operations against insurgency movements took place in East Timor during the period under review. It also indicates that rebels periodically harassed and terrorized civilians. 16/

28. On 11 December 1989, Indonesia and Australia signed a comprehensive agreement for a zone of cooperation for exploration and exploitation of offshore oil resources in Timor Gap. The agreement was to be implemented in 1990 following its ratification (see A/45/57-S/21022; A/45/60-S/21028; A/46/93-S/22249; and A/46/97-S/22285).

29. On 22 February 1991, the Government of Portugal filed in the Registry of the International Court of Justice an application instituting proceedings against Australia in a dispute concerning "certain activities with respect of East Timor". 17/ The text of the application is reproduced in the annex to the present report.

IV. HUMAN RIGHTS SITUATION

30. Below is a summary of observations relating to the human rights situation in East Timor, contained in Country Reports on Human Rights Practices for 1990, Indonesia, published in February 1991 by the United States Department of State: 18/

Military abuses in East Timor continued but apparently at a reduced rate overall. Approximately 15 civilians were reportedly killed in military operations in 1990, a decrease from 1989.

Areas of reported abuse included killing and physical mistreatment, sometimes torture, of civilians by the military and the police.

Security forces periodically took persons for interrogation, usually without notification to families, resulting in at least their temporary disappearance. No cases of suspected permanent disappearance were resolved.

Peaceful, though at times unruly, demonstrators were on several occasions beaten and wounded by security personnel. Three participants required hospitalization after riot police forcibly dispersed a demonstration during the January 1990 visit of the United States Ambassador. Police reportedly tortured at least one of five students arrested after a September 1990 pro-independence rally. Reports of torture and mistreatment of political detainees were persistent, although fewer in 1990 than in recent years.

Officials have publicly acknowledged and condemned police brutality and unacceptable prison conditions and occasionally instigated disciplinary action, including transfer, dismissal, trial and sentencing to prison terms. In 1990, however, there were no known instances of officials being punished for mistreatment of political prisoners or detainees.

Security forces periodically detained persons on suspicion of subversive activity or knowledge thereof for days or weeks, subsequently releasing most without charges. The youths temporarily detained for demonstrating during the Pope's October 1989 visit to East Timor were freed by January 1990. Early releases have reduced to 10 the number of East Timorese serving sentences in Dili and Jakarta for involvement with the FRETILIN rebels.

Judicial warrants for searches are required, except for cases involving suspected subversion, economic crimes and corruption. However, forced or surreptitious entry by security agencies reportedly occurred regularly. Security agencies intimidate by conducting surveillance of persons and residences, and they are believed to monitor selectively local and international telephone calls without legal restraint. In general, correspondence is not monitored.

Restrictions on freedom of speech and press exist. The Government closely regulates visiting and resident foreign correspondents and occasionally reminds the latter of its prerogative to deny requests for visa extensions.

The Constitution recognizes and provides for religious freedom. The Catholic Church operates widely in East Timor. Restrictions on freedom of movement exist.

Security checks affecting transportation and travel in East Timor outside Dili occurred sporadically; permission is required to visit certain districts considered sensitive for security reasons. Some journalists visiting East Timor were restricted from travelling wherever they wanted, while some others visiting as tourists were able to travel extensively. Curfews are often in force in connection with military operations in parts of East Timor. Family visits back to East Timor by East Timorese now living in Australia continue.

While the Government considers outside investigations of alleged human rights violations to be interference in its internal affairs, it facilitated access in 1990 by Asia Watch representatives preparing a report critical of prison conditions, and the Minister for Foreign Affairs met Asia Watch's executive director in New York in September 1990. Amnesty International has been refused access to Indonesia. Informal Asia Watch visits, in addition to the prison study, have been made during the past several years. Access to East Timor by such organizations, which the Government considers biased, has traditionally been restricted.

Under a 1985 agreement, the International Committee of the Red Cross is authorized by the Government to visit persons held for security reasons in East Timor. The conditions of such access improved somewhat in 1990.

31. Summarized below are observations relating to human rights practices in East Timor, contained in a recent report issued by Amnesty International entitled East Timor: Update on Human Rights Concerns since August 1990. 19/

According to Amnesty International, the human rights situation in East Timor has not improved since August 1990. The organization remains concerned about a continuing pattern of serious violations.

Amnesty International is increasingly concerned about a pattern of short-term detention, ill-treatment and torture of alleged political opponents of Indonesian rule in East Timor which has gained additional momentum since August 1990. It is alarmed by the number of detainees whose whereabouts remain unknown several days or weeks after their arrest by security forces.

The organization is also concerned over the Indonesian Government's continued refusal to allow human rights organizations, including Amnesty International, to visit East Timor to investigate human rights violations. It notes that this refusal is inconsistent with the Government's frequent public assertions that East Timor is "open" and that foreign observers and international organizations are welcome to visit.

According to Amnesty International, more than 100 persons, most of them students, young people and civil servants, were detained during the period from August 1990 to January 1991, for their alleged involvement in apparently peaceful pro-independence demonstrations or related political activities. Many of those detained have reportedly been ill-treated or tortured in custody, and at least five have been hospitalized as a result of their injuries.

In view of persistent reports that suspected political opponents of Indonesian rule in East Timor have been seriously ill-treated or tortured while under interrogation, Amnesty International is seriously concerned for the safety of all those detained for questioning, however briefly, by members of the security forces in connection with their alleged pro-independence activities.

Amnesty International believes that many of those detained during the period under review may be or were prisoners of conscience. Although the majority appear to have been released, at least 20 were believed still to be in custody in December 1990; some had been in custody for several weeks. They were held in various military and police detention centres and unofficial safe houses in the town of Dili and the districts of Baucau, Lospalos, Viqueque, Maliana and Liquisa.

The most recent wave of detentions began following a large pro-independence demonstration which took place shortly after the celebration of a Catholic mass at Lecidere, Dili, on 4 September 1990. Although there were reportedly no arrests made at the time of the demonstration, dozens of young people and students were said to have been detained in subsequent days and weeks.

Dozens of people, many of them local civil servants and teachers, were arrested in the district of Liquisa during the last three weeks of November 1990, reportedly accused of sympathizing with FRETILIN. Similar arrests took place in other districts.

Amnesty International is deeply concerned over the number of persons reported to be held in unacknowledged detention, some of whom may have "disappeared". According to reports, the whereabouts of more than 20 of those detained between September and December 1990 were unknown several days after they were taken into custody.

V. ECONOMIC AND SOCIAL CONDITIONS

32. In the absence of information under Article 73 *a* of the Charter, and for the reasons explained in paragraph 4 above, the information contained in the present section has been derived from sources other than the Portuguese Government.

33. According to Indonesian publications, the prevailing economic and social conditions in East Timor can be described as follows:

Natural resources

According to a survey conducted in 1989 by the Indonesian National Investment Coordinating Board and the Agency for the Assessment and Application of Technology, East Timor has significant mineral deposits: 3 million cubic metres of marble, 115.57 million cubic metres of bentonite (according to estimates); as well as phosphate, manganese, gold, copper, chromium, dolomite, wollastonite and clay. 20/

Agriculture

The annual average increase of food crop production was as follows: rice, 3.87 per cent; maize, 6.79 per cent; green beans, 0.82 per cent; soya beans, 196.15 per cent; cassava, 11.05 per cent; and vegetables, 9.02 per cent. 21/

In 1990, food production was as follows: rice, 50,171.66 tons; corn, 73,634.94 tons; green beans, 1,016.06 tons; soya beans, 68.84 tons; peanuts, 1,375.27 tons; cassava, 10,567.26 tons; sweet potatoes, 35,178.91 tons; and vegetables, 10,923.96 tons. 22/

In 1989, the indicators of animal husbandry were as follows: cows, 63,612; horses, 24,993; goats, 91,214; buffaloes, 43,554; sheep, 31,099; pigs, 256,031; chickens, 494,767; broilers, 144,614; and ducks, 31,750. 23/

Fishing

In 1989, the production of sea fishery was 680.13 tons and the production of inland fishery amounted to 48.11 tons. 24/

Forest

Forest areas in East Timor consisted of 25,165 hectares of nature reserve, 13,687 hectares of forest for recreational purposes, 432,277 hectares of protection forest, 170,484 hectares of limited forest, 45.24 hectares of production forest and 10,000 hectares of convertible forest. 25/

Communications

In 1989, the road network of East Timor consisted of 650 kilometres of "national roads" (49 per cent asphalted and 51 per cent gravelled) and of 989.26 kilometres of "provincial roads" (22 per cent asphalted and 78 per cent gravelled). 26/

From 1976 to 1989, 20 bridges with a total length of 959 metres were constructed. 27/ In 1988/89, the sum of 21,800 million rupiahs (Rp) was allocated to road network construction. 28/ In 1989, 330 traffic signs were installed in Dili and other areas, 27/ and efforts were made to improve Comoro airport facilities in Dili. 27/

Dili seaport, with a 180-metre quay nine metres deep, can accommodate 5,000 dead-weight tonnage vessels. Three to five vessels call at the port weekly. There were other local seaports under construction: Pante Makasar (Ambeno), Laga (Baucau), Con (Lautem), Beasu (Viqueque) and Betano (Manufahi). 22/

Industries

For the fiscal year 1990/91, Rp 1.5 billion was allocated for executing integrated development projects at Nitibe (Ambeno), Ossu (Viqueque), Alos (Manufahi), Manatuto and Maro (Lautem), Maubara (Liquisa) and Dili. 22/

As of the end of 1988, there were 1,032 units of industrial enterprises, comprising seven multifarious industries and 1,025 small-scale and handicraft industries.

The multifarious industries employed 830 persons and produced goods in the amount of Rp 1,380 million. There were 86 small-scale establishments; 939 units of handicraft businesses employed 3,949 persons and produced goods worth Rp 1,330 million. It was estimated that 90.4 per cent of those enterprises were privately owned. 30/

Education

In 1988/89, there were 26 kindergartens with 1,713 pupils and 73 teachers; 565 primary schools with 128,566 students and 4,357 teachers; 90 junior high schools with 33,314 students and 1,179 teachers; and 33 schools at the upper secondary level with 11,818 students and 675 teachers. 31/

In 1989, there were two universities, Timor Timur University and Open University, and one academy, the Kataketik Academy. The Open University was attended by 701 students, and the Kataketik Academy by 48 students. 31/

Health

There were eight State-run general hospitals and a number of public health centres. The medical personnel includes six medical specialists, 149 medical doctors, 75 midwives and 452 nurses. The ratio of medical doctors to the population was 1:7,000. 32/ In 1989/90, an amount of Rp 3,055,128,200 was allocated to public health programmes. 33/

34. According to press reports, in mid-June 1991 the Australian Ambassador to Indonesia announced at a meeting in the Netherlands of representatives of countries which have been providing financial assistance to Indonesia that Australia intended to contribute approximately \$2 million in aid for a number of sanitation, agricultural and irrigation projects in East Timor. The implementation of such projects would involve for the first time the deployment in the Territory of six experts who would begin to arrive in East Timor in September 1991. 34/

Notes

1/ World Population Prospects, 1988 (United Nations publication ST/ESA/SER.A/106, Sales No. E.88.XIII.7), p. 354.

2/ For details, see corresponding sections of the previous working papers prepared by the Secretariat contained in documents A/AC.109/L.1328, A/AC.109/623, 663, 715, 747, 783, 836, 871, 919, 961 and 1001.

3/ See General Assembly resolutions 1699 (XVI), 1807 (XVII), 1913 (XVIII), 2107 (XX), 2184 (XXI), 2395 (XXIII), 2507 (XXIV), 2707 (XXV), 2795 (XXVI), 2918 (XXVII), 3113 (XXVIII), 3294 (XXIX), 3485 (XXX) and 31/53, relating to the question of Territories under Portuguese administration, including East Timor; see also Assembly resolutions 32/34, 33/39, 34/40, 35/27, 36/50 and 37/30 on the question of East Timor.

4/ See A/35/233, A/36/160, A/37/113, A/38/125, A/39/136, A/40/159, A/41/190, A/42/171, A/43/219, A/44/262, A/45/172 and A/46/131. Owing to a lack of official information from the administering Power, the information contained in the present paper has been derived from published reports.

5/ A/38/352, A/39/361, A/40/622, A/41/602, A/42/539, A/43/588 and A/44/529.

6/ A/45/507.

7/ General Assembly decisions 38/402, 39/402, 40/402, 42/402 and 43/402; see also A/41/PV.3, A/44/PV.3 and A/45/PV.3.

8/ Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 23 (A/38/23); ibid., Thirty-ninth Session, Supplement No. 23 (A/39/23); ibid., Fortieth Session, Supplement No. 23 (A/40/23); ibid., Forty-first Session, Supplement No. 23 (A/41/23); ibid., Forty-second Session, Supplement No. 23 (A/42/23); ibid., Forty-third Session, Supplement No. 23 (A/43/23); and ibid., Forty-fourth Session, Supplement No. 23 (A/44/23).

9/ See Official Records of the Economic and Social Council, 1983, Supplement No. 2 (E/1983/14-E/CN.4/1983/60).

Notes (continued)

10/ Ibid., 1985, Supplement No. 2 (E/1985/22-E/CN.4/1985/66), paras. 276 and 277.

11/ E/CN.4/Sub.2/1988/L.26 and press release HR/3361.

12/ Under the Indonesian Constitution, the People's Consultative Assembly is the highest organ of government.

13/ Permanent Mission of Indonesia to the United Nations, press release No. 005/PR/070787, 7 July 1987.

14/ The New York Times, 21 October 1990.

15/ Journal de Genève, 13 March 1991.

16/ United States Department of State, Country Reports on Human Rights Practices for 1990, Indonesia (United States Government Printing Office, Washington, February 1991), p. 892.

17/ International Court of Justice press release ICJ/495 dated 6 March 1991.

18/ United States Department of State, Country Reports on Human Rights Practices for 1990, Indonesia, op. cit., pp. 892-909.

19/ Amnesty International, East Timor: Update on Human Rights Concerns since August 1990, January 1991 (Amnesty International Index: ASA 21/01/90; Distr.: SC/CO/GR).

20/ East Timor Strives for a Better Future, published by the Public Relations Bureau of East Timor, 1990, pp. 11 and 12.

21/ Ibid., p. 25.

22/ Permanent Mission of the Republic of Indonesia to the United Nations, press release No. 02/PR/051791.

23/ East Timor Strives for a Better Future, op. cit., p. 32.

24/ Ibid., p. 33.

25/ Ibid., p. 34.

26/ Ibid., p. 35.

27/ Ibid., p. 36.

Notes (continued)

28/ As of April 1991, the official exchange rate for the Indonesian rupiah was 1,950 to one United States dollar.

29/ East Timor Strives for a Better Future, op. cit., p. 37.

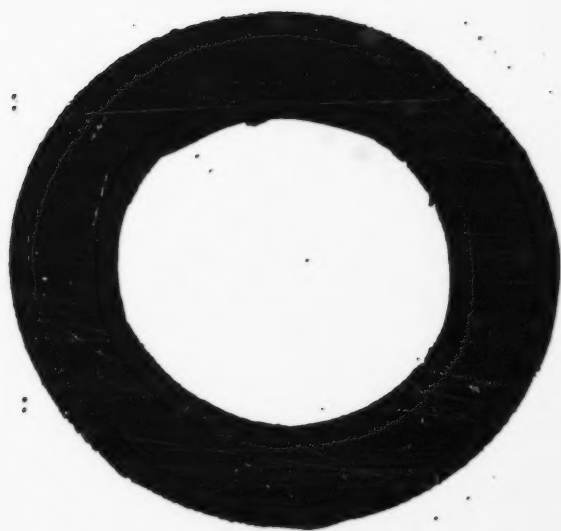
30/ Ibid., p. 49.

31/ Ibid., pp. 38-40.

32/ Ibid., p. 42.

33/ Ibid., p. 44.

34/ Diário de Notícias (Lisbon), 20 June 1991.



Annex

INTERNATIONAL COURT OF JUSTICE

**APPLICATION
INSTITUTING PROCEEDINGS**

filed in the Registry of the Court
on 22 February 1991

EAST TIMOR

(PORTUGAL v. AUSTRALIA)

/Original: English and French/

/...

APPLICATION OF THE REPUBLIC OF PORTUGAL

[Translation]

Acting on instructions from his Government, the undersigned, Ambassador of the Portuguese Republic to the Government of Her Majesty the Queen of the Netherlands, referring to the Declarations by which the Portuguese Republic and the Commonwealth of Australia have accepted the jurisdiction of the Court in accordance with the provisions of Article 36, paragraph 2, of its Statute, has the honour to submit to the International Court of Justice, in accordance with Article 40 of its Statute and Article 38 of the Rules of Court, an Application by Portugal instituting proceedings against the Commonwealth of Australia in the case set forth below, concerning certain activities of Australia with respect to East Timor.

I. SUBJECT OF THE DISPUTE

1. The dispute relates to the opposability to Australia:

- (a) of the duties of, and delegation of authority to, Portugal as the administering Power of the Territory of East Timor; and
- (b) of the right of the people of East Timor to self-determination, and the related rights (right to territorial integrity and unity and permanent sovereignty over natural wealth and resources).

Portugal maintains that, in its capacity of administering Power within the meaning of Article 73 of the Charter, it is performing an international public service and that, so long as the United Nations has not discharged it from this responsibility, it is invested with the corresponding duties and powers, which continue to be opposable, as do the rights of the people of East Timor, *erga omnes*, and in particular to all the member States of the United Nations, and hence to Australia.

2. The dispute has arisen from the actions, recounted below, by which Australia has, in the view of Portugal, failed to observe, at the least, the obligation to respect the duties and powers of the administering Power as mentioned in the preceding paragraph, the right of the people of East Timor to self-determination and the related rights, and Article 25 of the Charter: Australia by so doing has incurred international responsibility vis-à-vis both the people of East Timor and Portugal.

Those activities, shortly stated, have taken the form of the negotiation and conclusion by Australia with a third State of an agreement relating to the exploration and exploitation of the continental shelf in the area of the "Timor Gap" and the negotiation, currently in progress, of the delimitation of that same shelf with that same third State.

3. Moreover, by excluding negotiations with Portugal, which alone is legally empowered to represent the people of East Timor until its self-determination, Australia has, in addition, contravened a general obligation to negotiate with the competent State on matters of common interest and the specific obligation to negotiate with that State on questions relating to the maritime areas of direct concern to East Timor.

II. JURISDICTION OF THE COURT

4. The Court has jurisdiction to deal with the dispute submitted to it inasmuch as Portugal and Australia have both accepted the compulsory jurisdiction of the Court, in accordance with Article 36, paragraph 2, of its Statute, without any reservation relevant to the present Application.

III. STATEMENT OF THE FACTS

A. *The Status of East Timor*

5. The Territory of East Timor corresponds to the eastern part of the island of Timor, located in Oceania.

The Territory also includes the island of Atauro, to the north, the islet of Jaco, to the east, and the enclave of Oé-Cusse in the western part of the island of Timor.

The end-points of the land frontier are, respectively, latitude 8° 57' 55.2" S and longitude 124° 56' 38.4" E, and latitude 9° 27' 05.7" S and longitude 125° 05' 27.4" E. The easternmost point of the Territory (in the islet of Jaco) lies at longitude 127° 20' 30" E.

The south coast of East Timor lies opposite the coast of Australia, the distance between the coasts being approximately 430 kilometres and the distance between the baselines being everywhere less than 400 nautical miles.

6. Historically, East Timor was a Portuguese colony, and had been since the sixteenth century. During that century, the western part of the island fell under Dutch domination and, along with all the neighbouring islands, constituted the Dutch East Indies.

The Treaty of 20 April 1859 between Portugal and the Netherlands, of which ratifications were exchanged on 23 August 1860, defined the land frontier between East Timor and West Timor. The definition of the land territory of East Timor also derives from the Convention of Lisbon between Portugal and the Netherlands, and from the Declaration appended to it, dated respectively 10 June and 1 July 1893 (ratifications exchanged on 31 January 1894) and from the Convention of The Hague of 1 October 1904 (ratifications exchanged on 29 October 1908).

On its becoming independent in 1954, Indonesia became the neighbouring State of the Territory of East Timor.

7. In the United Nations context, and from the standpoint of United Nations law, East Timor was, from General Assembly resolution 1542 (XV) of 15 December 1960 onwards, classed as a *non-self-governing territory*, its people having the right to self-determination. Portugal recognized that classification and that right in 1974 — first internally, by Constitutional Law 7/74 of 27 July, and then internationally, by means of a memorandum dated 3 August from the Portuguese Government to the Secretary-General of the United Nations.

8. After the revolution in Portugal on 25 April 1974, local political movements arose in East Timor¹, frequently in conflict with each other. The Portu-

¹ Specifically UDT: "União Democrática Timorense" (Democratic Union of Timor), FRETLIN: "Frente Revolucionária de Timor-Leste Independente" (Revolutionary Front for Independence of East Timor), and APODETI: "Associação Popular Democrática Timorense" (Timorese Democratic People's Union).

guese authorities recognized these organizations and entered into consultations with them as far as possible, particularly with respect to the process of self-determination and the future of the Territory.

The outcome was Constitutional Law 7/75 of 17 July 1975 which, having reaffirmed the right of the people of Timor to self-determination, with all its consequences including independence, in accordance with the relevant resolutions of the United Nations (Art. 1), entrusted the definition of the political future of the Territory to a People's Assembly representing the people of the Territory, elected by universal, secret and direct suffrage (Art. 2). That Assembly was to be elected in October 1976 (Art. 3).

9. In August 1975, however, increasingly grave divergences between the local political forces led to an internal situation of serious conflict, without Portugal being in a position to prevent it. The Government of the Portuguese Republic however took a series of measures, and towards the end of November it was still trying to organize a conference with the movements, with a view to putting an end to that situation. On 28 November FRETILIN nonetheless proclaimed the independence of the Territory as the "Democratic Republic of East Timor". MAC (Anti-Communist Movement)¹, on the other hand, proclaimed the integration of East Timor into Indonesia on 30 November. The Portuguese Government reacted immediately by refusing to accept either the unilateral declaration of independence or the declaration of integration. This latter declaration obtained no international recognition. The declaration proclaiming the creation of a new State also failed to obtain any significant degree of recognition and FRETILIN itself abandoned it; it recognized that Portugal is still the administering Power of the Territory, and entered into an alliance with UDT in the "Democratic Convergence", which gives political support to the struggle of the people of Timor to achieve self-determination.

On 7 December 1975, Indonesian troops invaded the Territory of East Timor and Indonesia occupied it *de facto* by force of arms, and continues to occupy it, in spite of the armed struggle aimed at national liberation which is still being waged by the people of East Timor.

10. Portugal immediately laid the matter before the United Nations General Assembly and Security Council, each of which pronounced on it by their respective resolutions 3485 (XXX) of 12 December 1975 and 384 (1975) of 22 December 1975 (see Annex 1).

The first of those resolutions, while *strongly deploring* the military intervention,

"Calls upon all States to respect the inalienable right of the people of Portuguese Timor to self-determination, freedom and independence and to determine their future political status in accordance with the principles of the Charter of the United Nations and the Declaration on the Granting of Independence to Colonial Countries and Peoples",

and to "respect the unity and territorial integrity of Portuguese Timor" (paras. 1 and 7).

Security Council resolution 384

"Calls upon all States to respect the territorial integrity of East Timor as well as the inalienable right of its people to self-determination in accordance with General Assembly resolution 1514 (XV)"

¹ Promoted by APODETI.

and

"Urges all States and other parties concerned to co-operate fully with the efforts of the United Nations to achieve a peaceful solution to the existing situation and to facilitate the decolonization of the Territory" (paras. 1 and 4).

11. The rights of the people of East Timor to self-determination, territorial integrity and unity have on several occasions been reasserted by the competent organs of the United Nations, which have never ceased to recognize them.

The relevant resolutions (whose texts are attached in Annex I) are:

- Security Council resolutions 384 (1975) of 22 December 1975 and 389 (1976) of 22 April 1976;
- General Assembly resolutions 3485 (XXX) of 12 December 1975, 31/53 of 1 December 1976, 32/34 of 28 November 1977, 33/39 of 13 December 1978, 34/40 of 21 November 1979, 35/27 of 11 November 1980, 36/50 of 24 November 1981 and 37/30 of 23 November 1982.

Moreover, East Timor has continuously been, and still is, included on the United Nations list of non-self-governing territories, with the agreement of the administering Power, while the "Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples" is still seized of the question of East Timor.

12. As for Portugal, it was and continues to be described, by the competent organs of the United Nations, as the *administering Power* of the Territory of East Timor.

It is explicitly so called in Security Council resolution 384 (1975) of 22 December 1975 and by General Assembly resolutions 3485 (XXX) of 12 December 1975, 34/40 of 21 November 1979, 35/27 of 11 November 1980, 36/50 of 24 November 1981 and 37/30 of 23 November 1982.

The United Nations Committee on Decolonization too, known as the Committee of 24, considers Portugal to be the *administering Power* of the Territory of East Timor (see Annex I).

13. On the internal level, Article 293, paragraph 1, of the Portuguese Constitution declares that

"Portugal shall remain bound by its responsibility, in accordance with international law, to promote and safeguard the right of the people of East Timor to self-determination and independence".

14. Notwithstanding the *de facto* occupation of the Territory of East Timor and the *de facto* limitations which derive from it, Portugal, as can be seen from its attitude in the United Nations and elsewhere, has never abandoned and can never abandon its status as the administering Power of the Territory, and the duties attendant upon that status. It considers itself still to be the repository of the rights of the people of East Timor, with the task of helping to promote, by all available means, the exercise of their fundamental right to self-determination.

It is moreover in that legal capacity, as the administering Power of the Territory of East Timor, by virtue of which it has the duties and powers necessary to

the accomplishment of its international public service, that Portugal is filing the present Application, thereby acting on behalf of and in the interest of the people of East Timor and at the same time on its own behalf (in so far as Portugal has the right to discharge its responsibilities to that people and to the international community).

15. Within the United Nations, the task entrusted to the Secretary-General by General Assembly resolution 37/30 of 23 November 1982 is still going forward with the collaboration of the Portuguese Government, with a view to "exploring avenues for achieving a comprehensive settlement of the problem" of East Timor, by the exercise of its people's right to self-determination.

B. The Activities of Australia

16. By an agreement of 9 October 1972, Australia and Indonesia had already delimited the continental shelf located in the areas of the seas of Arafura and Timor, to the west of longitude 133° 23' E. The delimitation line terminates at a point located at longitude 127° 56' E (and latitude 9° 28' S) and only resumes, to the west, at a point located at longitude 125° 41' E (and latitude 10° 37' S). This accordingly leaves a kind of "opening" which has become known as the "Timor Gap" — a name later given, by extension, to the whole area lying between East Timor and Australia.

The agreement of 9 October 1972 is in itself sufficient recognition — and this is its significance in the present case — by Australia that the question of rights over the continental shelf, and that of the "frontal" delimitation of that shelf in the area of the "Timor Gap", concerned only Australia itself and the Territory of East Timor.

17. It should also be observed that, with regard to rights over the continental shelf in the area of the "Timor Gap", there has in the past been, and still is, a disagreement between Portugal and Australia.

Portugal has recently notified Australia, under Article III of the Optional Protocol of Signature concerning the Compulsory Settlement of Disputes, done at Geneva on 29 April 1958, that it considers that a dispute exists between the parties in this respect, and it reserves the right to enlarge the present Application or to file another Application on the subject, if it considers such action to be necessary in order to safeguard the right of the people of East Timor to self-determination and to exercise permanent sovereignty over its natural wealth and resources.

18. Subsequently Australia entered into negotiations with the neighbouring State — and occupying State — of East Timor with respect to the exploration and exploitation of the continental shelf in the area of the "Timor Gap", the exercise of jurisdiction over that shelf, and its delimitation. The negotiations have so far led to the signature of an agreement dated 11 December 1989.

That agreement is presented as a provisional arrangement of a practical nature (pending the outcome of the current negotiations on the delimitation of the continental shelf in the same area), and one which relates solely to the exploration and exploitation of hydrocarbon resources, but it also makes provision for and regulates certain acts of exercise of jurisdiction: it purports to establish a "Zone of Cooperation" consisting of three areas, Area A in the centre, Area B to the south (and accordingly closer to Australia), and Area C to the north (and accordingly closer to East Timor), with the boundaries indicated in the attached document (Annex 2).

According to the agreement, Areas B and C are each to be explored and exploited by one of the States, although the other is to receive a part of the resulting tax revenues. Area A is an area of joint exploration, exploitation and jurisdiction, administered by a "Joint Authority" under the supervision and control of a "Ministerial Council", both organs being composed of representatives of the two States (see Annex 2).

19. The so-called "Zone of Cooperation" and, in particular, Area A, is located in the heart of the "Timor Gap" and corresponds to areas over which only East Timor and Australia can have rights.

In particular, the whole of Area A and, obviously, Area C, is included in the area claimed by Portugal as being subject to the exclusive rights to the continental shelf appertaining to East Timor.

20. The Portuguese Government, as soon as it became aware of the negotiations leading up to the above-mentioned agreement, and of their object, protested vigorously to the Australian Government on several occasions, particularly on 19 September 1985, 9 September and 31 October 1988, 30 October 1989 and, after the signature of the agreement, on 13 December 1989 (see Annex 4).

In all those protests, Portugal laid emphasis upon the right to self-determination of the people of East Timor and upon its own status as administering Power of the territory in question. It reaffirmed the duties and powers which it has by virtue of that status and the rights of the people of East Timor, which Australia, by negotiating with a third State in a field that was only of concern to itself and to the Territory of East Timor, has failed to respect.

21. Australia replied in writing to Portugal's protest of 31 October 1988, by a Note delivered to the Embassy of Portugal in Canberra on 2 November, which invoked the freedom of each State to recognize or not to recognize rights or situations, and to deal with other States, regardless of the origin of the territorial acquisitions in question.

22. In spite of Portugal's protests, the Government of Australia signed the agreement and commenced the procedure for its ratification.

The Australian Parliament passed the "Petroleum (Australia-Indonesia Zone of Cooperation) Act 1990" (see Annex 2) and went on to pass the "Petroleum (Australia-Indonesia Zone of Cooperation) (Consequential Provisions) Act 1990" — the purpose of these two Acts was to "enable" the agreement to be implemented, by introducing the internal legislative measures required to that end.

23. On 12 February 1991 a Proclamation by the Governor-General of the Commonwealth of Australia was published in the Commonwealth of Australia Gazette fixing 9 February 1991 as the date of commencement of the "Petroleum (Australia-Indonesia Zone of Cooperation) Act 1990" (see Annex 3).

In view of the terms of Article 2 of that Act, the Proclamation signifies that Australia had, in the meanwhile, ratified the agreement of 11 December 1989.

On that very day, 9 February 1991, the Ministerial Council established by the agreement held a meeting which amounted to initiation of the performance of that agreement.

24. Once again the Portuguese Government protested in the strongest terms, in a Note handed to the Foreign Minister of Australia by the Ambassador of Portugal in Canberra on 11 February 1991 (see Annex 4).

25. Australia has in fact excluded any negotiation with Portugal — which is nonetheless the administering Power of East Timor — in relation to all aspects of the exploration, exploitation and delimitation of the continental shelf in the area of the "Timor Gap".

26. All the activities reported in the above paragraphs 18, 22, 23 and 25, i.e., the negotiation, signature, ratification, and the initiation of the performance, of an agreement relating to the exploration and exploitation of the continental shelf in the area of the "Timor Gap", together with the related internal legislation, the negotiation of the delimitation of that shelf and the exclusion of any negotiation on those matters with Portugal, are obviously directly imputable or attributable to Australia, the author thereof.

Those activities have caused particularly serious legal and moral damage to the people of East Timor and to Portugal, which will become material damage also if the exploitation of hydrocarbon resources begins.

IV. LEGAL GROUNDS

27. The Application by Portugal is based in the first place upon:

- the right of the people of East Timor to self-determination and the related rights including, in particular, the right to territorial integrity and unity and to permanent sovereignty over its natural wealth and resources;
- the position of Portugal as the administering Power of the Territory of East Timor and the duties, powers and rights (primarily the right of Portugal to fulfil the obligations incumbent upon it) entailed therein.

Portugal maintains, both on the basis of the law of the United Nations and on the basis of general international law, that all these legal situations are valid *erga omnes* and specifically vis-à-vis Australia, so that any non-recognition on the part of Australia is not only without relevance but is also unlawful in so far as it is translated into infringement of them; and that Australia has at least the obligation to respect them.

28. In the specific context of the *law of the United Nations*, Portugal relies in this respect upon:

- (a) the *Charter* itself, to which Australia and Portugal are parties, and in particular Articles 1, paragraph 2, 55, 56, 73 and 75 *et seq.*, interpreted in accordance with the practice of the United Nations;
- (b) the acts of the competent organs of the United Nations in application of that law and, in particular, the resolutions mentioned in paragraphs 11 and 12 of the present Application.

29. As regards general international law, Portugal adduces, in particular:

- (a) the *higher principles* of the self-determination of peoples and the integrity and unity of non-self-governing territories, as supported and expressed by State practice and by a large number of United Nations resolutions, specifically General Assembly resolutions 1514 (XV) of 14 December 1960 (Declaration on the Granting of Independence to Colonial Countries and Peoples), 1541 (XV) of 15 December 1960 (Principles Which Should Guide Members in Determining Whether or Not an Obligation Exists to Transmit the Information Called for under Article 73 (e) of the Charter), and 2625 (XXV) of 24 October 1970 (Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations), together with the decisions of international tribunals and, in particular, the jurisprudence of the International Court of Justice;

- (b) the principle of the permanent sovereignty of peoples and States over their natural wealth and resources, as supported and expressed by State practice and by numerous United Nations resolutions, including resolution 1803 (XVII) of 14 December 1962 and resolution 3281 (XXIX) of 12 December 1974;
- (c) the *International Covenant on Economic, Social and Cultural Rights* of 16 December 1966 (which came into force on 3 January 1976 and was ratified by Australia on 10 December 1975 and by Portugal on 31 July 1978) and the *International Covenant on Civil and Political Rights* of the same date (which came into force on 23 March 1976 and was ratified by Australia on 13 August 1980 and by Portugal on 15 June 1978) and, in particular, Article 1, paragraph 1, of each instrument, with regard to the right to self-determination, and Article 1, paragraph 2, of each instrument, concerning permanent sovereignty.

30. Portugal moreover maintains that Australia has failed to comply with its obligations, deriving from *Article 25 of the Charter*, to accept and carry out Security Council resolutions 384 and 389.

31. In addition, Portugal considers that, by the fact mentioned in paragraph 25 of this Application, Australia has failed to comply with its obligation to negotiate with Portugal.

To establish that obligation, Portugal relies upon the *custom* that requires that States should negotiate on matters of common interest and, more particularly, upon the *custom* relating to the negotiation of issues related to the delimitation, exploration and exploitation of maritime areas.

32. Portugal maintains finally that Australia, by the facts mentioned in paragraphs 18, 22, 23 and 25 of the present Application, has incurred international responsibility, should cease from infringing the relevant international norms, and owes reparation to the people of East Timor and to Portugal.

To that end, Portugal relies upon:

- (a) *custom* relating to international responsibility, as supported and expressed by State practice, by international case-law and by the work of the International Law Commission;
- (b) the *general principles of law* as referred to in Article 38, paragraph 1 (c), of the Statute of the International Court of Justice and, in particular, the principle whereby whoever is in breach of an obligation and infringes the right or protected interest of another is liable to make reparation.

33. Portugal reserves the right to invoke any other legal grounds which it may consider to be relevant.

V. SUBMISSIONS

34. Having regard to the facts and points of law briefly stated above, and without prejudice to such arguments of fact and law and to such evidence as may be submitted in due course, and likewise without prejudice to the right to supplement and amend the present submissions,

Portugal has the honour to request that:

May it please the Court:

- (1) To adjudge and declare that, first, the rights of the people of East Timor to self-determination, to territorial integrity and unity (as defined in paragraphs 5 and 6 of the present Application) and to permanent sovereignty over

its wealth and natural resources and, secondly, the duties, powers and rights of Portugal as the administering Power of the Territory of East Timor are opposable to Australia, which is under an obligation not to disregard them, but to respect them.

(2) To adjudge and declare that Australia, inasmuch as in the first place it has negotiated, concluded and initiated performance of the agreement referred to in paragraph 18 of the statement of facts, has taken internal legislative measures for the application thereof, and is continuing to negotiate, with the State party to that agreement, the delimitation of the continental shelf in the area of the "Timor Gap"; and inasmuch as it has furthermore excluded any negotiation with the administering Power with respect to the exploration and exploitation of the continental shelf in that same area; and, finally, inasmuch as it contemplates exploring and exploiting the subsoil of the sea in the "Timor Gap" on the basis of a plurilateral title to which Portugal is not a party (each of these facts sufficing on its own):

- (a) has infringed and is infringing the right of the people of East Timor to self-determination, to territorial integrity and unity and its permanent sovereignty over its natural wealth and resources, and is in breach of the obligation not to disregard but to respect that right, that integrity and that sovereignty;
- (b) has infringed and is infringing the powers of Portugal as the administering Power of the Territory of East Timor, is impeding the fulfilment of its duties to the people of East Timor and to the international community, is infringing the right of Portugal to fulfil its responsibilities and is in breach of the obligation not to disregard but to respect those powers and duties and that right;
- (c) is contravening Security Council resolutions 384 and 389 and, as a consequence, is in breach of the obligation to accept and carry out Security Council resolutions laid down by Article 25 of the Charter of the United Nations and, more generally, is in breach of the obligation incumbent on member States to co-operate in good faith with the United Nations;

(3) To adjudge and declare that, inasmuch as it has excluded and is excluding any negotiation with Portugal as the administering Power of the Territory of East Timor, with respect to the exploration and exploitation of the continental shelf in the area of the "Timor Gap", Australia has failed and is failing in its duty to negotiate in order to harmonize the respective rights in the event of a conflict of rights or of claims over maritime areas.

(4) To adjudge and declare that, by the breaches indicated in paragraphs 2 and 3 of the present submissions, Australia has incurred international responsibility and has caused damage, for which it owes reparation to the people of East Timor and to Portugal, in such form and manner as may be indicated by the Court.

(5) To adjudge and declare that Australia is bound, in relation to the people of East Timor, to Portugal and to the international community, to cease from all breaches of the rights and international norms referred to in paragraphs 1, 2 and 3 of the present submissions and in particular, until such time as the people of East Timor shall have exercised its right to self-determination, under the conditions laid down by the United Nations:

- (a) to refrain from any negotiation, signature or ratification of any agreement with a State other than the administering Power concerning the delimitation, and the exploration and exploitation, of the continental shelf, or the exercise of jurisdiction over that shelf, in the area of the "Timor Gap";

(b) to refrain from any act relating to the exploration and exploitation of the continental shelf in the area of the "Timor Gap" or to the exercise of jurisdiction over that shelf, on the basis of any plurilateral title to which Portugal, as the administering Power of the Territory of East Timor, is not a party.

35. The undersigned has the honour to inform the Court that the Government of Portugal has appointed him to act as its Agent for the purposes of the case and that his address for service is the Embassy of Portugal, The Hague.

The Hague, 22 February 1991.

(Signed) Francisco Manuel BALTAZAR MOITA.

Four Annexes¹.

¹ The Annexes, of which some were filed in English and some in French, are being published separately in two versions, one entirely in English and one entirely in French. *(Note by the Registry.)*



General Assembly

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2 August 1991

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OF THE DECLARATION ON THE GRANTING
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COUNTRIES AND PEOPLES

EAST TIMOR

Working paper prepared by the Secretariat

Corrigendum

Paragraph 9

For the existing text substitute

9. Also during the general debate at the forty-fifth session, the President of Mozambique and the Prime Minister of Vanuatu, as well as the representatives of Cape Verde and Angola referred, inter alia, to the question of East Timor in their statements (A/45/PV.8, 13, 18, 24 and 29).



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Addendum

Page 4

After paragraph 16 insert the following new paragraph 17

17. On 30 August 1990, the Subcommission on Prevention of Discrimination and Protection of Minorities adopted by secret ballot, by 14 votes to 9, with 1 abstention, resolution 1990/15 entitled "Situation in East Timor", whereby it recommended to the Commission on Human Rights that it consider, at its forty-seventh session, the situation pertaining to human rights and fundamental freedoms in East Timor (see E/CN.4/1991/2-E/CN.4/Sub.2/1990/59).

and renumber the succeeding paragraphs accordingly.
